LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
DEC 22 1970
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1153

CHARLES SALES CORPORATION, et al.,
Petitioners,

vs.

JAMES G. HODGSKIN, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

MILTON A. FRIED
Attorney for Petitioners
47 N. E. 21st Street
Miami, Florida 33137

INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATUTORY PROVISIONS INVOLVED	3
STATEMENT	
Introduction	4
Proceedings Below	4
Civil Punitive Damages Violate Equal Protection Clause of 14th Amendment to the United States Constitution	5
CONCLUSION	13
CERTIFICATE OF SERVICE	14
APPENDIX	

TABLE OF CITATIONS

CASES

	Page
Burton v. Wilmington Parking Authority, 365 U.S. 715, 81 Sup. Ct. 856, 6 L.ed. 2d. 45	5
Fay v. Parker, 1873, 53 N.H. 342	8
Fisher v. City of Miami, Fla. 1965, 172 So2d. 455	5
Hutchinson v. Lott, Fla. App. 1959, 110 So2d. 442	6
Lehman v. Spencer Ladd's, Inc., Fla. 1966, 182 So2d. 402, 404	12
Lejeune Rural Hospital, Inc. v. Watson, Fla. App. 1965, 171 So2d. 202	7
Lewis v. Mundy, Fla. App. 3rd 1967, 195 So2d. 239	5
Lilly v. Brennan, 129 Fla. 675, 177 So. 218, 219 (1937)	7
Maki v. Aluminum Building Products, 1968, 436 P.2d. 186	12
Mendoza v. Farrell, Fla. App. 1967, 199 So2d. 750	5
Pegram v. Steitz, 1888, 31 W. Va. 220 6 S.E. 485	11

TABLE OF CITATIONS (cont.)

CASES

	Page
Spokane Truck & Dray Co. v. Hoefer, 1891, 2 Wash. 45, 25 P. 1072, 11 L.R.A. 639	12
State Farm Mut. Auto. Ins. Co. v. Gunn, Fla. App. 1960, 119 So2d. 319	6

AUTHORITIES

6 Central Law Journ., 74, 1878	11
Title 42, Section 1981, U.S.C.	6
Title 28, Section 1257 (3)	2

In the

Supreme Court

of the

United States

OCTOBER TERM, 1970

No. _____

CHARLES SALES CORPORATION, et al.,

Petitioners,

vs.

JAMES G. HODGSKIN, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Petitioners pray that A Writ of Certiorari be issued to review the decision of the District Court of Appeal of the State of Florida, Fourth District, entered in the above styled cause on July 22, 1970, re-hearing denied September 18, 1970, found at 239 So2d. 107, Certiorari denied by the Supreme Court of Florida on November 12, 1970, and found at 240 So2d.

OPINIONS BELOW

The Opinions of the Courts below directly preceding this Petition are as follows:

1. Order on Various Motions dated December 10, 1968 (Appendix page 2)
2. Final Judgment dated March 4, 1969. (Appendix page 4)
3. Order on Post Trial Motions dated March 19, 1969. (Appendix page 6)
4. Opinion of District Court of Appeal, Fourth District, dated July 22, 1970 (Appendix page 12)
5. Order of Supreme Court of Florida denying Certiorari dated November 12, 1970 (Appendix page 13)

JURISDICTION

The Judgment of the District Court of Appeal of Florida, Fourth District, was entered on July 22, 1970, and rendered final by the Supreme Court of Florida's denial of Petition for Certiorari on November 12, 1970.

The Jurisdiction of this Court is invoked under Title 28, U. S. Section 1257 (3).

QUESTIONS PRESENTED

WHETHER CIVIL, PUNITIVE, OR EXEMPLARY DAMAGES AS A COMMON LAW RIGHT ARE VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the equal protection clause of the 14th Amendment to the Constitution of the United States, to wit:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

This case also involves Title 42, Section 1981 U.S.C., implementing the 14th Amendment to the Constitution, stating in its material portions:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of person and property . . . and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other. (emphasis added)

STATEMENT

INTRODUCTION

Petitioners are here seeking review of a decision of the District Court of Appeal of Florida, Fourth District, which affirmed the entry of a judgment for punitive damages in the lower court against all of the Petitioners. Said Opinion of the District Court of Appeal of Florida, Fourth District, was completely silent as to all of the points raised on the Appeal, one of which was the question presented herein, which was originally raised before the trial court by Motion to Strike by the Petitioners.

PROCEEDINGS BELOW

The Respondents filed suit against the Petitioners in the Circuit Court of the Ninth Judicial Circuit, In and For Orange County, Florida, claiming compensatory and punitive damages against the Petitioners.

The Respondents claimed that the Petitioners entered upon premises owned by them for the purpose of removing property that the Petitioners had purchased in a bankruptcy sale and in addition to removing the items purchased, pursuant to order of the bankruptcy court, removed numerous other items and plundered, ravaged, destroyed and converted a substantial portion of the Respondents improvements on its property in unlawful trespass. The Petitioners filed a Motion to Strike (appendix page) which Motion was denied and the cause proceeded to trial resulting in a final judgment in favor of the Respondents and against the Petitioners for both compensatory and punitive damages. An Appeal ensued in which the question presented here was raised as error, resulting in the opinion of the District Court of Appeal of Florida, Fourth District, which Petitioners seek to have reviewed herein.

CIVIL PUNITIVE DAMAGES VIOLATE EQUAL PROTECTION CLAUSE OF 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

In Florida, a jury is granted complete discretion in assessing the amount of punitive damages against a defendant limited only by his total wealth. **Fisher v. City of Miami**, Fla. 1965, 172 So2d. 455; **Lewis v. Moody**, Fla.App. 3rd 1967, 195 So2d. 260; **Mendoza v. Farrell**, Fla.App. 3rd 1967, 199 So2d. 750. Furthermore, the plaintiff, once alleging outrageous conduct to the extent that would grant him a prospective punitive award, can usurp the private financial books and records of the chosen defendant, merely to demonstrate to the jury that this defendant is "rich" and vulnerable to high awards **Lewis v. Moody**, Supra. This type of procedure amounts not only to discriminatory measure against a man of property and prominence, but also to an invasion of privacy. Hence, civil punitive awards violate not only the conscience of justice, but more importantly, the 14th Amendment, Equal Protection Clause of the United States Constitution, in that punitive awards grant a private individual a right through a civil judiciary process to administer punishment measured by the unfortunate defendant's personal wealth rather than respective culpability.

This wrong is perpetrated by a private individual against another, through the courts of the State of Florida resulting in a denial of Equal Protection of law. The prerequisite to federal protection against unlawful state action to its citizens is more than satisfied in this instance as stated by this Court in **Burton v. Wilmington Parking Authority**, 365 U.S. 715, 81 Sup.Ct. 856, 6 L.ed. 2d. 45 at page 722:

> . . . Private conduct abridging individual rights do no violence to the equal protection clause unless to some significant extent the state in any of its manifestations has been found to have become involved in it.

Title 42, Section 1981 U.S.C. was implemented so as to guarantee "Equal Rights under the Law":

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of person and property . . . and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other. (emphasis added)

The crux of the problem is that under the Constitution, two (2) individuals functioning in identical situations can not be punished in a different manner which is the case if one individual is of great wealth and the other poor where punitive damages are sought.

Under our system of government rich and poor alike are entitled to equal justice and the concept of punitive damages does violence to this concept.

The amount of punitive damages in any case is left to the discretion of the jury, limited by law only to the respective wealth of the defendant. **Hutchinson v. Lott,** (Fla.App. 1959) 110 So2d. 442. Florida jurisprudence does not relate the amount of punitive damages to the amount of compensatory damages which the jury might award—it requires only that some compensatory damages be awarded. **State Farm Mut. Auto Ins. Co. v. Gaaz,** (Fla.

App. 1960) 119 So2d. 319; LeJeune Road Hospital, Inc. v. Watson, (Fla.App. 1965) 171 So2d. 202. The justification for punitive damages has, of course, been that they are a punishment for and a deterrent to wanton, criminal acts. Lilly v. Brennan, 129 Fla. 675, (1937) 177 So. 218, 219.

These theories supporting punitive damages are wrong because they amount to confiscation of an individual's property through state action for the sole benefit of an individual citizen without due process. (A judicial inquiry and finding of criminal intent, criminal negligence, or—call it what you will as has been done to justify such an award). If a person is to be secure in ownership of his property, and if he is not to be deprived of it, except by due process of law, then what justification is there in a civil action for charging a jury that it may find criminal intent, and if it does, then to return a verdict for such a sum as it may be prompted to do so?

Nor is a person's right to equal protection under the law salvaged by instructing a jury that if they find criminal conduct, the only limitation on the amount of their award is the defendant's wealth. Once inflamed with such adjectives as "criminal", "wanton", and "reckless disregard for others", the jury is permitted to denude a defendant of his last asset so long as he is not thereby made a bankrupt. If punitive damages are meant to be a penalty and it cannot be denied that they are a penalty then they should bear a relationship to the amount of the injury and tortfeasors should be punished with an equal hand from case to case, based upon their relative culpability and not their respective wealth. It is suggested that punitive awards should be placed in a proper classification with those damages which are awarded for pain and suffering.

In addition the defendant in action for punitive damages loses the most elemental right when confronted with a criminal type offense for which he is to be penalized, being that of guilt beyond any reasonable doubt, whereas in civil punitive damages in Florida, a mere preponderance of the evidence will convict a defendant and make him liable to punitive damages. In Fay v. Parker, 1872, 53 N.H. 342, the court stated the entire case at page 397:

> Now, why all this unnecessary trouble, confusion, and perplexity, when the course of procedure should be plain, straight, and uninterrupted? The true rule, simple and just, is to keep the civil and the criminal process and practice distinct and separate. Let the criminal law deal with the criminal, and administer punishment for the legitimate purpose and end of punishment,—namely, the reformation of the offender and the safety of the people. Let the individual, whose rights are infringed and who has suffered injury, go to the civil courts and there obtain full and ample reparation and compensation; but let him not thus obtain the "fruits" to which he is not entitled, and which belong to others.
>
> Why longer tolerate a false doctrine, which, in its practical exemplification, deprives a defendant of his constitutional right of indictment or complaint on oath before being called into court? deprives him of the right of meeting the witnesses against him face to face? deprives him of the right of not being compelled to testify against himself? deprives him of the right of being acquitted, unless the proof of his offense

is established beyond all reasonable doubt? deprives him of the right of not being punished twice for the same offense?

Punitive damages destroy every constitutional safeguard within their reach. And what is to be gained by this annihilation and obliteration of fundamental law? The sole object, in its practical results, seems to be, to give a plaintiff something which he does not claim in his declaration. If justice to the plaintiff required the destruction of the constitution, there would be some pretext for wishing the constitution were destroyed. But why demolish the plainest guaranties of that instrument, and explode the very foundation upon which constitutional guaranties are based, for no other purpose than to perpetuate false theories and develop unwholesome fruits?

Undoubtedly this pernicious doctrine "has become so fixed in the law," to repeat the language of Mr. Justice Campbell of Michigan, "that it may be difficult to get rid of it." But it is the business of courts to deal with difficulties; and this heresy should be taken in hand without favor, firmly and fearlessly.

It was once said, "If thy right eye offend thee, pluck it out; * * and if thy right hand offend thee, cut it off." Wherefore, not reluctantly should we apply the knife to this deformity, concerning which every true member of the sound and healthy body of the law may well exclaim,—"I have no need of thee."

Even criminal statutes provide a limitation on the fine or forfeiture to be paid by a defendant so that no matter who commits a criminal offense against the state, he knows that his fine, if there be one assessed, can not exceed the statutory amount. The Federal AntiTrust Statutes provide for punitive damages, but basically, the limit one can receive is the time honored concept of "treble" damages, which not only is limited in amount, but directly related to the actual damages suffered by the plaintiff. So much was the jury inflamed and blinded in the instant cause that it awarded punitive damages against one of the petitioners in an amount almost seven (7) times it's entire net worth, however, the court in it's post trial order dated March 19, 1969 (appendix page) reduced said judgment to the amount of total retained earnings of said defendant thereby putting said defendant in the position of not being bankrupt, but being without any net assets.

Punitive damages also does violence to the idea that a person can not be compelled to testify against himself in a penal or criminal matter since punitive damages are construed in Florida to be civil in nature. Thus a defendant can be compelled to testify upon pain of default judgments, striking of pleadings or any number of other punitive acts by state action through its courts.

This is not to say that a defendant who has acted with outrageous or malicious conduct, causing another mental suffering or emotional pain, should not compensate for such acts. For the courts have recognized and provided for just such a course of action.

> . . . All he (i.e. injured party) can ask is to be fully compensated for the wrong done, and that such compensation should include, not only what we have called determinate pecuniary loss, but also all indeterminate damages, as I have called them, such as for mental suffering, wounded feelings, bodily pain, and the like. When he has recovered this, he has recovered all possible damage sustained by him . . . and it is unjust to give him more . . . Pegram v. Stortz, 31 W. Va. 220, 6 S. E. 485, 497, 1888.

Furthermore:

> "Every trespass is now, or may readily be made, an offense against the public, for which the guilty is made responsible to the community. The injured party ought not to be made the avenger of a public wrong."

> "Let . . . the offender of the laws make his fine to the state the duty of which it is to protect, and which pays for the administration of injustice, but not to the injured person, who when compensated liberally for his individual loss, has no further claim on his opponent." 6 Central Law Jour. 74, 1878.

Not only is this an encroachment upon the constitutional rights and freedoms of the defendant, but also serves as an unnecessary windfall to an enterprising plaintiff. The enterprising plaintiff and his lawyer have done enough violence to our judicial system.

In the recent case of Maki v. Aluminum Building Products, 436 P2d. 186, 1968, The Supreme Court of Washington stated at page 187:

> . . . From Spokane Truck & Dray Co. v. Hoefer, 2 Wash. 45, 25P. 1072, 11 L.R.A. 689, 1891, to the present day, this court has held that the doctrine of punitive damages is unsound in principle and that such damages cannot be recovered in this jurisdiction . . . "

The Supreme Court of Florida, in Lehman v. Spencer Ladd's, Inc. (Fla. 1966) 182 So2d. 402, 404, has alluded to the problem of punitive damages and stated at page 404:

> . . . This procedure, with the allowance of evidence of financial worth of the tortfeasors, will make possible the attainment of the objective and the purpose of punitive damages, IF A DEFENSIBLE ONE REMAINS, i.e. punishment of each wrong doer . . . (Emphasis added)

The highest court in the State of Florida has thus stated that it apparently has doubts as to any defensible objective remains for private civil punitive damages and seem to indicate that it was perhaps willing to strike out in a new direction at some time. Petitioners had appealed to the Supreme Court of Florida for a Writ of Certiorari based upon that case and several others, however, it is respectfully submitted that the Supreme Court of Florida just as this court, can deny a Writ of Certiorari, however, it has no effect upon the law since it neither approves nor disapproves of the lower court ruling but rather, for it's own reasons, may very well decline to accept jurisdiction under the law.

CONCLUSION

It is respectfully submitted that the entire concept of punitive damages is offensive to due process of law and equal protection and should once and for all be stricken from the law of the land. Several states, speaking through their courts, have had the courage to do so and it is respectfully submitted that:

> "The equal protection of the laws" guaranteed by U.S.C.A.Const. Amend. 14 means that any person has the right, on the same terms and on the same conditions as that of others, to come before the courts for the security of his property and person, for the enforcement of contracts and the prevention and redress of injuries, and also that he is guaranteed freedom from any charges or burdens greater or other than those charged under similar conditions imposed upon other persons. Railroad Tax Case, 1882, 13 F. 722, 8 Sawy. 238, error dismissed 6 S.Ct. 317, 116 U.S. 138, 29 L.Ed. 589.

Civil punitive damages as assessed and awarded in Florida are directly in violation of the 14th Amendment to the United States Constitution as a denial of Equal Protection of the Laws as well as a deprivation of property without due process.

Respectfully submitted,

MILTON A. FRIED
Attorney for Petitioners
47 N. E. 21st Street
Miami, Florida 33137
(305) 373-5643

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by prepaid United States Mail to William T. Moore, Esq., of MOORE, WELBAUM, ZOOK & JONES, Attorneys for Respondents, Suite 810, Biscayne Building, 19 West Flagler Street, Miami, Florida 33130, Clerk, District Court of Appeal, Fourth District, Post Office Box A, West Palm Beach, Florida 33402, and Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, this ____ day of December, 1970.

MILTON A. FRIED
Attorney for Petitioners
47 Northeast 21st Street
Miami, Florida 33137
(305) 373-5643

APPENDIX

APPENDIX

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

NO: 67-783 (Judge Barker)

[TITLE OMITTED]

Filed October 31, 1968.

MOTION TO STRIKE

Defendants, Charles Sales Corp., Charles Sales Corp. of Orlando and Joseph Gordon, move this court to strike the prayer for punitive damages herein and for their grounds allege:

1. That the pleadings and affidavits herein affirmatively show that Plaintiffs are not entitled to punitive damages in the premises.

2. That punitive damages are in violation of the 14th amendment to the Constitution of the United States of America, in that they are prima facie a denial of equal protection of the laws to persons of wealth and means and cannot be permitted in the absence of a specific statute of legislative enactment, since a person's net worth is a determining factor to be considered in arriving at an amount to be assessed and thereby a person of wealth or means is not given the same justice for the same acts as a person without means.

/s/ Milton A. Fried
MILTON A. FRIED
Attorney for Charles Sales Corp.
Charles Sales Corp. of Orlando
& Joseph Gordon
47 Northeast 21st Street
Miami, Florida 33137

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CIVIL ACTION NO. 67-783

[TITLE OMITTED]

Filed December 11, 1968.

ORDER ON VARIOUS MOTIONS

THIS CAUSE came on for hearing before the undersigned Judge upon the following motions filed by the Defendants CHARLES SALES CORP., CHARLES SALES CORP. OF ORLANDO, and JOSEPH GORDON, to wit, motion to stay order on motion to produce, motion to strike, and motion for entry of judgment, and further upon the motion of the Plaintiffs to strike sham pleadings and motion for relief under Rule 1.380, Florida Rules of Civil Procedure, and after argument of counsel and the Court being fully advised in the premises, it is

ORDERED and ADJUDGED as follows:

1. The motion to stay order of motion to produce filed by said Defendants be and the same is hereby denied, provided, however, said Defendants shall produce copies of the documents heretofore ordered produced by the Order of this Court dated October 22, 1968, on or before December 16, 1968. Said documents shall be produced at the offices of CHARLES SALES CORP. in Miami, Florida, at which time photostatic copies thereof shall be given to counsel for the Plaintiffs herein, and said counsel will order it not to reveal the contents of or show said documents to anyone pending further Order of this Court.

2. Ruling upon said Defendants' motion to strike be and the same is hereby reserved and will be considered

by this Court further either at pre-trial conference or prior to the beginning of the trial in this cause, and the Plaintiffs may submit a memorandum of law in opposition to said motion to strike as it deems advisable.

3. Said Defendants' motion for entry of judgment against the Plaintiffs JAMES G. HODGSKIN and AUDREY L. NICHOLS upon the promissory note which is the subject matter of the counterclaim filed herein be and the same is hereby reserved, provided however, that the Court will enter said summary judgment at such time as the original note shall be produced and filed in evidence in the Court file which said judgment shall include the sum of $500.00 as a reasonable attorney's fee as stipulated by counsel and, provided further, that upon the entry of said judgment the Court shall order execution to issue and allow it to be placed in the hands of the Sheriff of Orange County, Florida, for docketing but the Court shall at said time prohibit the Sheriff of said county from taking steps to enforce the execution by levy or otherwise until further Order of the Court.

In view of the foregoing rulings of the Court, it is,

ORDERED and ADJUDGED that the Plaintiffs' motion to strike sham pleadings and motion for relief under Rule 1.380, Florida Rules of Civil Procedure, be and the same is hereby denied.

DONE and ORDERED in Chambers at Orlando, Orange County, Florida, this 10th day of December, 1968.

/s/ Roger A. Barker

Circuit Judge

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

Case No. 67-783 (Barker)

[TITLE OMITTED]

Filed March 4, 1969.

FINAL JUDGMENT

THIS CAUSE having come on before the undersigned judge and the issues having been tried by a jury duly selected and sworn in accordance with law, and the Court having at the trial of this cause granted the ore tenus motion of the Defendants, CHARLES SALES CORPORATION, CHARLES SALES CORPORATION OF ORLANDO and JOSEPH GORDON, to dismiss First Federal Savings and Loan Association of DeLand, Florida, as a party plaintiff to this cause, and the remaining plaintiffs having voluntarily elected to dismiss their claim herein against the Defendant, AARON NATHAN, and the jury, after due deliberation on the remaining issues in this cause, having rendered their verdicts herein, it is

ORDERED AND ADJUDGED as follows:

1. That the Plaintiffs, JAMES G. HODGSKIN, also known as J. G. HODGSKIN; JEAN R. HODGSKIN; THOMAS P. RAUSCH, also known as T. P. RAUSCH; MARGIE M. RAUSCH; AUDREY L. NICHOLS, also known as A. L. NICHOLS, each individually, and JAMES G. HODGSKIN, THOMAS P. RAUSCH and AUDREY L. NICHOLS, d/b/a JATCO COMPANY, a partnership,

do have and recover of and from the Defendants, CHARLES SALES CORPORATION, CHARLES SALES CORPORATION OF ORLANDO and JOSEPH GORDON, jointly and severally, the principal sum of FORTY-THOUSAND AND NO/100 ($40,000.00) DOLLARS as compensatory damages together with interest thereon at the lawful rate of 6% per annum from October 31, 1966, to the date hereof in the amount of FIVE THOUSAND FOUR HUNDRED TWENTY-TWO AND 50/100 ($5,422.50) DOLLARS, making a total joint and several judgment on account of compensatory damages and interest of FORTY-FIVE THOUSAND FOUR HUNDRED TWENTY-TWO AND 50/100 ($45,422.50) DOLLARS, for which let execution issue as provided by law.

2. That the Plaintiffs referred to and listed in Paragraph 1 above do further have and recover from each of the Defendants hereinafter named the following sums in addition to those set forth in Paragraph 1 above, as and for punitive or exemplary damages in accordance with the jury's verdict rendered in this cause, to wit:

TWENTY THOUSAND ($20,000.00) DOLLARS of and from Defendant, CHARLES SALES CORPORATION; and

TWENTY THOUSAND ($20,000.00) DOLLARS of and from Defendant, CHARLES SALES CORPORATION OF ORLANDO; and

TWENTY THOUSAND ($20,000.00) DOLLARS of and from Defendant, JOSEPH GORDON;

for all of which let execution issue as provided by law.

3. That First Federal Savings and Loan Association of DeLand, Florida, is hereby dismissed as a party-plaintiff to this cause, and AARON NATHAN is hereby dismissed as a party-defendant to this cause, with prejudice.

The Court hereby reserves jurisdiction to tax costs in accordance with such motion to tax the same as may be hereinafter filed by said Plaintiffs.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 4th day of March, 1969.

/s/ Roger A. Barker

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CIVIL ACTION NO. 67-783

[TITLE OMITTED]

Filed March 19, 1969.

ORDER ON POST-TRIAL MOTIONS

This cause came on for hearing before me, the undersigned Circuit Judge, on the 14th day of March, 1969 upon the plaintiffs' motion to tax costs, upon the defendants' motion for a remittitur or in the alternative for a new trial, and upon the defendants' ore tenus motion for an order fixing the amount, terms, and conditions for supersedeas.

Argument was had by counsel for both parties upon the mentioned motions, and the Court in consideration of the arguments of counsel, the record, and the law, is of the opinion that:

The plaintiffs' motion to tax costs is hereby granted as made, with the exception of Items 3, 5, 14, and 19 thereof, for the amounts of $100.00, $54.55, $60.35, and $88.90, respectively, for a total sum of $1,084.45 in taxable costs against the defendants jointly and severally.

The defendants' motion for a remittitur of punitive damages or in the alternative for a new trial is hereby granted as to Charles Sales Corporation of Orlando, Inc. in the amount of $17,000.00, for the reason that the plaintiffs' Exhibit 59 shows that that defendant had retained earnings of approximately $3,000.00 in 1968, and for the reasons stated in the defendants' motion as to that company. The plaintiffs did not refuse to remit the mentioned sum.

The defendants' motion for a remittitur or in the alternative for a new trial is hereby denied as to Charles Sales Corporation, and as to Joseph Gordon.

The defendants' ore tenus motion for an order setting the amount, terms, and conditions for a good and sufficient bond in order to supersede the final judgment was considered and is hereby granted as follows:

(1) Supersedeas on an appeal from the final judgment for both compensatory and punitive damages will be as follows:

(a) Charles Sales Corporation of Orlando, Inc., $49,506.95, plus any additional taxable costs, plus interest on that amount at the rate of 6% per annum or any daily portion thereof.

(b) Charles Sales Corporation, $66,506.95, plus any additional taxable costs, plus interest at the rate of 6% per annum or any daily portion thereof.

(c) Joseph Gordon, $66,506.95, plus any additional taxable costs, plus interest at the rate of 6% per annum or any daily portion thereof.

(2) Supersedeas on an appeal from that portion of the final judgment that is based solely upon verdicts for punitive damages, and assuming that that portion of the final judgment for compensatory damages, court costs, and interest, has been paid, will be as follows:

(a) Charles Sales Corporation of Orlando, Inc., $3,000.00, plus any additional taxable costs, plus interest at the rate of 6% per annum or any daily portion thereof.

(b) Charles Sales Corporation, $20,000.00, plus any additional taxable costs, plus interest at the rate of 6% per annum or any daily portion thereof.

(c) Joseph Gordon, $20,000.00, plus any additional taxable costs, plus interest at the rate of 6% per annum or any daily portion thereof.

The defendants are granted seven days from the date hereof to secure a good and sufficient bond in order to supersede the final judgment.

DONE and ORDERED in Chambers at Orlando, Orange County, Florida, this 19th day of March, 1969.

/s/ Roger A. Barker

Circuit Judge

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CIVIL ACTION NO. 67-783

[TITLE OMITTED]

Filed April 15, 1969.

NOTICE OF APPEAL

CHARLES SALES CORPORATION, CHARLES SALES CORPORATION OF ORLANDO, INC. and JOSEPH GORDON, defendants, take and enter their appeal to the District Court of Appeal of Florida, Fourth District, to review the Final Judgment of the Circuit Court for Orange County, Florida, bearing date the 4th day of March, 1969, and rendered and recorded in Official Records Book 1812 at pages 661-662. The nature of the order appealed from is a final judgment for money in favor of the plaintiff and against the named defendants. All parties to said cause are called upon to take notice of the entry of this appeal.

/s/ Eli H. Subin

ELI H. SUBIN
Of: Roth, Segal & Levine
140 South Court Street
Orlando, Florida 32801
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to WILLIAM T. MOORE, ESQ., 1010 Biscayne Building, Miami, Florida, by mail, this 15th day of April, 1969.

/s/ Eli H. Subin

Attorney

Recorded & Record Verified

Kenneth Kienth, Clerk of
Circuit Court,
Orange Co., Fla.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

CIVIL ACTION NO. 67-783

[TITLE OMITTED]

Filed April 15, 1969.

ASSIGNMENTS OF ERROR

The defendants, CHARLES SALES CORPORATION, CHARLES SALES CORPORATION OF ORLANDO, INC. and JOSEPH GORDON, designate the following judicial acts as error in the above styled cause:

1. Refusal to direct a verdict in favor of CHARLES SALES CORPORATION and JOSEPH GORDON at the close of the plaintiff's case, and at the close of the evidence.

2. Refusal to direct a verdict in favor of CHARLES SALES CORPORATION, CHARLES SALES CORPORATION OF ORLANDO, INC., and JOSEPH GORDON at the close of the plaintiff's case, and at the close of the evidence on the issue of punitive damages.

3. Refusal to declare punitive damages to be violative of Section 1, Declaration of Rights of the Constitution of Florida, and to be violative of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

4. Refusal to grant the motion of CHARLES SALES CORPORATION and JOSEPH GORDON for a remittitur or in the alternative for a new trial on the grounds stated in Paragraphs 2, 3, 4, 5, 6, and 7 of their said motion dated March 4, 1969 upon a verdict returned February 27, 1969.

5. Granting an inadequate remittitur to CHARLES SALES CORPORATION OF ORLANDO, INC. upon its motion for a remittitur or in the alternative for a new trial, said motion dated March 4, 1969 upon a verdict returned February 27, 1969.

DATED this 15th day of April, 1969.

/s/ Eli H. Subin

Of: ROTH, SEGAL & LEVINE
ELI H. SUBIN
140 South Court Street
Orlando, Florida 32801
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to WILLIAM T. MOORE, ESQ., 1010 Biscayne Building, Miami, Florida, by mail, this 15th day of April, 1969.

/s/ Eli H. Subin

Attorney

I hereby certify that the above and foregoing are true copies of instruments filed in my office.

(SEAL)

/s/ Evelyn R. Flack
EVELYN R. FLACK, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FOURTH DISTRICT

DISTRICT COURT OF APPEAL OF FLORIDA,
FOURTH DISTRICT

July 22, 1970.

No. 69-253.

[TITLE OMITTED]

Rehearing Denied Sept. 18, 1970.

Appeal from Circuit Court, Orange County; Roger A. Barker, Judge.

Eli H. Subin, of Roth, Segal & Levine, Orlando, for appellants.

William T. Moore, of Moore, Welbaum, Zook & Jones, Miami, for appellees Hodgskins, Rauschs, Nichols, Jatco Company and First Federal.

PER CURIAM.

On the basis of the briefs, record, and oral argument, we are of the opinion that the appellants have failed to demonstrate error and have thus failed to carry their burden on appeal. The judgment appealed from is affirmed.

Affirmed.

CROSS, C. J., and REED, J., and MacMILLAN, HUGH, Associate Judge, concur.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1970

THURSDAY, NOVEMBER 12, 1970

CASE NO. 40,255

DISTRICT COURT OF APPEAL,
FOURTH DISTRICT

[TITLE OMITTED]

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ERVIN, C.J., DREW, CARLTON, ADKINS and BOYD, JJ., concur.

cc: Honorable Evelyn R. Flack, Clerk
Honorable Kenneth Kienth, Clerk
Honorable Milton A. Fried
Honorable William T. Moore

A True Copy

TEST:
/s/ Sid J. White
SID J. WHITE
Clerk Supreme Court.
(SEAL)

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1970

WEDNESDAY, NOVEMBER 25, 1970

CASE NO. 40,255

[TITLE OMITTED]

Petitioners have filed petition for an order continuing the supersedeas bond; and upon consideration thereof, said petition is granted and proceedings in this Court and in the District Court of Appeal, Fourth District, and in the Circuit Court Ninth Judicial Circuit in and for Orange County, Florida are hereby stayed to and including December 28, 1970 to enable petitioners to seek review in the Supreme Court of the United States and obtain any further stay from that court and it is further

ORDERED that this stay be subject to continuance in effect of present bond in the same amount and on the same conditions.

cc: Hon. Milton A. Fried
Hon. William T. Moore
Hon. Evelyn R. Flack, Clerk
Hon. Kenneth Kienth, Clerk

A True Copy

TEST:
/s/ Sid J. White
SID J. WHITE
Clerk Supreme Court.

Supreme Court, U.S.
FILED
JAN 21 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1153

CHARLES SALES CORPORATION, et al.,
Petitioners,

vs.

JAMES G. HODGSKIN, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

WILLIAM T. MOORE
Attorney for Respondents
810 Biscayne Building
19 West Flagler Street
Miami, Florida 33130

MIAMI REVIEW — 371-4853 — 377-3721

INDEX

Case	Page
STATEMENT	1
RESPONSE TO QUESTION PRESENTED AS TO WHETHER CIVIL PUNITIVE DAMAGES VIOLATE THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION	2
CONCLUSION	9
CERTIFICATE OF SERVICE	11

TABLE OF CITATIONS

	Page
Bank of Miami v. Tambourine, (Fla.App.1969), 218 So.2d 507	8
Curtis Publishing Co. v. Butts and Associated Press v. Walker, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967)	5, 6, 7
Day v. Woodworth, et al., 13 How. 363, 370, 14 L.Ed. 181 (1851)	2, 3, 4
Fisher v. City of Miami, (S.Ct.ofFla. 1965), 172 So.2d 455	8
Lake Shore & M.S.Ry.Co. v. Prentice, 147 U.S. 101, 13 S.Ct. 261, 37 L.Ed. 97 (1893)	4
Lewis v. Moody, (Fla.App.1967), 195 So.2d 260	8
Lindgren Plumbing Company, Inc. v. Doral Country Club, Inc., (Fla.App.1967), 196 So.2d 242	8
Louis Pizitz Dry Goods Co., Inc. v. Yeldell, 274 U.S. 112, 47 S.Ct. 509, 71 L.Ed. 952, 51 A.L.R. 1376 (1927)	5
Mendoza v. Farrell, (Fla.App.1967) 199 So.2d 750, 752	8
Scott v. Donald and *Gardner v. Donald,* 165 U.S. 58, 17 S.Ct. 265, 41 L.Ed. 632 (1897)	4, 5
Washington Gas-Light Co. v. Lansden, 172 U.S. 534, 19 S.Ct. 296, 43 L.Ed. 543 (1899)	5
Winn & Lovett Grocery Co. v. Archer, (1936) 126 Fla. 308, 171 So. 214, 221	7, 8

in the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1153

CHARLES SALES CORPORATION, et al.,
Petitioners,

vs.

JAMES G. HODGSKIN, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

STATEMENT

Respondents, in general, agree with Petitioners' introductory statement and reference to the proceedings below. The Petitioners are CHARLES SALES CORPORATION OF ORLANDO and JOSEPH GORDON. The

respondents are JAMES G. HODGSKIN, also known as J. G. HODGSKIN; THOMAS P. RAUSCH; also known as T. P. RAUSCH; MARGIE M. RAUSCH; AUDREY L. NICHOLS, also known as A. L. NICHOLS; each individually; and JAMES G. HODGSKIN, THOMAS P. RAUSCH and AUDREY L. NICHOLS, d/b/a JATCO COMPANY, a partnership.

RESPONSE TO QUESTION PRESENTED AS TO WHETHER CIVIL PUNITIVE DAMAGES VIOLATE THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

The petition filed in this cause asserts several times that the amount of punitive damages is left to the discretion of a jury and is "limited by law only to the respective wealth of the defendant." Respondents do not agree with that statement as an abstract proposition, because jury awards of punitive damages are subject to the general propositions of law that they could not stand if the jury was prejudiced or if there was fraud. Further, there are provisions for remittitur in the event of excessive verdict. Such a remittitur was in fact granted in this case as to the punitive damages assessed against one of the petitioners.

Awards of punitive damages in civil cases have been recognized in the common law for well over two hundred years. What appears to be the earliest decision of the United States Supreme Court on the subject is found in the case of *Day v. Woodworth, et al.*, 13 How. 363, 370, 14 L.Ed. 181 (1851) wherein the court stated:

"It is a well established principle of the common law that in actions of trespass and all actions on the case for torts, a jury may inflict what are called exemplary, punitive or vindictive damages upon a defendant, having in view the enormity of his offense rather than the measure of compensation to the plaintiff. We are aware that the propriety of this doctrine has been questioned by some writers; but if repeated judicial decisions for more than a century are to be received as the best exposition of what the law is, the question will not admit of argument. By the common as well as by statute law, men are often punished for aggravated misconduct or lawless acts, by means of a civil action, and the damages, inflicted by way of penalty or punishment, given to the party injured. In many civil actions, such as libel, slander, seduction, etc., the wrong done to the plaintiff is incapable of being measured by a money standard; and the damages assessed depend on the circumstances, showing the degree of moral turpitude or atrocity of the defendant's conduct, and may properly be termed exemplary or vindictive rather than compensatory. In actions of trespass, where the injury has been wanton and malicious, or gross and outrageous, courts permit juries to add to the measured compensation of the plaintiff which he would have been entitled to recover, had the injury been inflicted without design or intention, something farther by way of punishment or example, which has sometimes been called 'smart money.' This has been always left to the discretion of the jury, as the degree of punishment to be thus inflicted must

> depend on the peculiar circumstances of each case. It must be evident, also, that it depends upon the degree of malice, wantonness, oppression, or outrage of the defendant's conduct; the punishment of his delinquency cannot be measured by the expenses of the plaintiff in prosecuting his suit."

Furthermore, in speaking of the question of punitive damages in intentional tort cases, the Supreme Court of the United States in *Lake Shore & M.S.Ry. Co. v. Prentice*, 147 U.S. 101, 13 S.Ct. 261, 37 L.Ed. 97 (1893) held:

> "This question, like others affecting the liability of a railroad corporation as a common carrier of goods or passengers — such as its right to contract for exemption from responsibility for its own negligence, or its liability beyond its own line, or its liability to one of its servants for the act of another person in its employment, — is a question, not of local law, but of general jurisprudence, but which this court, in the absence of express statute regulating the subject, will exercise its own judgment, uncontrolled by the decisions of the courts of the several states."

Again, in 1897, the United States Supreme Court, in the combined cases of *Scott v. Donald* and *Gardner v. Donald*, 165 U.S. 58, 17 S.Ct. 265, 41 L.Ed. 632, expressed its approval of punitive damage awards in proper cases and stated:

> "Damages have been defined to be the compensation which the law will award for an injury done, and are said to be exemplary and allowable in excess of the actual loss where a tort is aggra-

> vated by evil motive, actual malice, deliberate violence or oppression. While some courts and text writers have questioned the soundness of this doctrine, it has been accepted in England, in most of the states of this Union, *and has received the sanction of this court.*" (Emphasis added)

The United States Supreme Court once more considered the punitive damage question in 1899 in the case of *Washington Gas-Light Co. v. Lansden*, 172 U.S. 534, 19 S.Ct. 296, 43 L.Ed. 543, and stated:

> "Punitive damages are damages beyond and above the amount which a plaintiff has really suffered, and they are awarded upon the theory that they are a punishment to the defendant, and not a mere matter of compensation for injuries sustained by plaintiff."

This Honorable Court in 1927 upheld the constitutionality of an Alabama statute, the effect of which was to impose *vicarious* liability for compensatory and punitive damages upon employers for injuries inflicted upon their employees by fellow employees where only simple negligence was involved. (See *Louis Pizitz Dry Goods Co., Inc. v. Yeldell*, 274 U.S. 112, 47 S.Ct. 509, 71 L.Ed. 952, 51 A.L.R. 1376). In the last mentioned case, the attack upon the statute was that it violated the Fourteenth Amendment of the United States Constitution.

Finally, in the opinion in the combined cases of *Curtis Publishing Co. v. Butts* and *Associated Press v. Walker*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094, just decided by this Honorable Court in 1967, the majority affirmed the practice of assessing punitive damages in civil cases and stated:

"We come finally to Curtis' contention that whether or not it can be required to compensate Butts for any injury it may have caused him, it cannot be subjected to an assessment for punitive damages limited only by the 'enlightened conscience' of the community. *Curtis recognizes that the Constitution presents no general bar to the assessment of punitive damages in a civil case,* Day v. Woodworth, 13 How. 363, 370-371, 14 L.Ed. 181, but contends that an unlimited punitive award against a magazine publisher constitutes an effective prior restraint by giving the jury the power to destroy the publisher's business. We cannot accept this reasoning. Publishers like Curtis engage in a wide variety of activities which may lead to tort suits where punitive damages are a possibility. To exempt a publisher, because of the nature of his calling, from an imposition generally exacted from other members of the community, would be to extend a protection not required by the constitutional guarantee. Associated Press v. National Labor Relations Board, 301 U.S. 103, 57 S.Ct. 650, 81 L.Ed. 953. We think the constitutional guarantee of freedom of speech and press is adequately served by judicial control over excessive jury verdicts . . . and by the general rule that a verdict based on jury prejudice cannot be sustained even when punitive damages are warranted.

* * *

> "We hold, therefore, that misconduct sufficient to justify the award of compensatory damages also justifies the imposition of a punitive award, subject of course to the limitation that such award is not demonstrated to be founded on the mere prejudice of the jury." (Emphasis added).

Thus it is clear that the United States Supreme Court has recognized and approved civil punitive damage awards in proper cases for over one hundred years and that such awards were recognized in the English common law even long before that.

Likewise, the courts of Florida have given recognition to such awards. The landmark case in Florida on the question appears to have been the 1936 Florida Supreme Court decision of *Winn & Lovett Grocery Co. v. Archer*, 126 Fla. 308, 171 So. 214, 221, wherein the court held:

> "Exemplary damages are given solely as a punishment where torts are committed with fraud, actual malice, or deliberate violence or oppression, or when the defendant acts willfully or with such gross negligence as to indicate a wanton disregard of the rights of others. Exemplary or punitive damages are therefore damages ultra compensation, and are authorized to be inflicted when the wrong done partakes of a criminal character, though not punishable as an offense against the state, or consists of aggravated misconduct or a lawless act resulting in injury to plaintiff when sought to be redressed by a civil action for the tort."

The above quote from *Winn & Lovett v. Archer* was requoted with approval in the 1969 Florida case of *Bank of Miami v. Tambourine* (Fla.App. 1969), 218 So.2d 507.

Likewise, the recent Florida case of *Mendoza v. Farrell* (Fla.App. 1967), 199 So.2d 750, 752, held:

> "Punitive damages may be recovered for a trespass and for an assault, against one who in the performance thereof has acted with malice, moral turpitude, wantonness, willfulness or reckless indifference to the rights of others."

In *Winn & Lovett Grocery Co. v. Archer*, supra, the court pointed out with respect to punitive damage awards in Florida that:

> ". . . they are peculiarly left to the discretion of the jury as the degree of punishment to be inflicted must always be dependent on the circumstances of each case, as well as upon the demonstrated degree of malice, wantonness, oppression, or outrage found by the jury from the evidence."

Punitive damage awards have also been approved in the following recent Florida cases: *Fisher v. City of Miami* (Supreme Court of Florida, 1965), 172 So.2d 455; *Lewis v. Moody* (Fla.App. 1967), 195 So.2d 260, and *Lindgren Plumbing Company, Inc. v. Doral Country Club, Inc.* (Fla.App. 1967), 196 So.2d 242. (This last cited case was one involving a conversion of personal property as is the case at bar).

CONCLUSION

It is respectfully submitted that there is abundant authority for awarding punitive damages in proper cases under Florida jurisprudence and that the common law in that respect has been recognized and approved by this Honorable Court uninterrupted and on several occasions for over one hundred years.

It is further respectfully submitted that petitioners have given no compelling reason for upsetting those decisions (other than the reason inherent in their petition that they would like to be relieved of the responsibility to pay imposed upon them by a jury which heard the facts).

Finally, we respectfully submit that the petitioners, having carried this case through trial in the circuit court and appeal in the District Court of Appeal and having petitioned the Supreme Court of Florida for a writ of certiorari and having now petitioned this Honorable Court for such a writ, have caused a delay of almost two years since trial of the case, with a full knowledge of the long-standing approval of punitive damage awards by the overwhelming majority of courts in this country.

Respondents would request that the court not only deny the petition for writ of certiorari but that respondents be given costs, interest and special damages for delay as is permitted within this court's discretion, by Subsection 4 of Rule 56 of the United States Supreme Court Rules, which provides:

"4. Where a petition for writ of certiorari has been filed, and there appears to be no ground for granting such a writ, the court may, in appropriate cases, adjudge to the respondent reasonable damages for his delay."

Respectfully submitted,

WILLIAM T. MOORE
Attorney for Respondents
810 Biscayne Building
19 West Flagler Street
Miami, Florida 33130
(305) 379-3761

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by prepaid United States Mail to MILTON A. FRIED, ESQ., Attorney for Petitioners, 47 Northwest 21st Street, Miami, Florida 33137; Clerk; District Court of Appeal, Fourth District, Post Office Box "A", West Palm Beach, Florida 33402; and Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, this 19 day of January, 1971.

William T. Moore

WILLIAM T. MOORE
Attorney for Respondents
810 Biscayne Building
19 West Flagler Street
Miami, Florida 33130
(305) 379-3761

CERTIORARI

DENIED